

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

KATIE KINDLER, et al.,)	
)	
Plaintiffs,)	
)	
vs.)	Case No. 09-0315-CV-W-ODS
)	
mitsubishi motors credit of)	
america, inc., et al.,)	
)	
Defendants.)	

ORDER AND OPINION DENYING PLAINTIFFS' MOTION FOR SANCTIONS

Pending is Plaintiffs' Motion for Sanctions, which seeks sanctions against Defendants because Defendants asserted counterclaims against Plaintiffs. The motion (Doc. # 31) is denied.

This is a would-be class action¹ on behalf of automobile lessors, alleging the Defendants/lessees failed to disclose certain tax obligations that would be owed by the lessors. Defendants have filed counterclaims, which Plaintiffs describe as lacking factual support and as having been asserted "solely to harass and oppress plaintiffs and frustrate their efforts to pursue this lawsuit as a class action." Significantly, absent from the filings is any request to actually dismiss the counterclaims. The Court cannot justify sanctioning a party for asserting a claim that remains in the case. Even if the Court interprets Plaintiffs' motion as containing an implicit request to dismiss the counterclaims, the request would be denied. The alleged lack of factual support is not an issue the Court can consider at this time. The counterclaims assert breach of contract and unjust enrichment, which are legally cognizable claims. The Court does not fully understand the rationale behind the counterclaims, and there may be some infirmity that will call for their dismissal – but if there is, it has not been presented to the Court.

¹Plaintiffs describe the case as a class action, but technically it has not been certified as such. Motions such as this may give the Court pause when a Motion to Certify is filed. See Fed. R. Civ. P. 23(a)(4).

Finally, the parties argue about whether the counterclaims are permissive or compulsory. The argument is irrelevant to the present inquiry, because even if they were permissive and not compulsory the Court cannot sanction Defendants for asserting them.

The motion for sanctions is denied. Defendant's request for fees is also denied.
IT IS SO ORDERED.

DATE: December 7, 2009

/s/ Ortrie D. Smith
ORTRIE D. SMITH, JUDGE
UNITED STATES DISTRICT COURT